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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,304	07/24/2003	Aaron Strand	8362-CIP-CIP-DIV	1940

22922 7590 12/15/2008  
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EXAMINER
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THAKUR, VIREN A

ART UNIT	PAPER NUMBER
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1794

NOTIFICATION DATE	DELIVERY MODE
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12/15/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

IPAdmin@reinhardtllaw.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/626,304	<b>Applicant(s)</b> STRAND ET AL.	
	<b>Examiner</b> VIREN THAKUR	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 August 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 148, 152-155, 157-167, 169, 179 and 187-218 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 148, 152-155, 157-167, 169, 179 and 187-218 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Response to Amendment*

1. As a result of the amendment, the objection to claims 157-167 has been withdrawn.
2. As a result of the amendment, the rejection of claims 148 regarding the inconsistency between the preamble and the body of the claim has been withdrawn.

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. **Claims 148, 152-155, 157-160, 164-166, 169, 179, 187-197, 201-203, 205-218 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buchman et al.**

**(US 20010053253) in view of Stolmeier et al. (US 6257763), Provan (US 6286189), May (US 5725312), Malin (US 6183134) and McMahon (US 6138439).**

The claims are rejected for the reasons given in the previous Office Action, mailed February 21, 2008.

The new limitations to claim 148 now recites wherein the pre-packaged cheese bag being filled with at least one cheese through the opening. This limitation does not change the previous rejection which also relied on Provan to teach filling the bag with cheese. Buchman et al. already taught filling the bag through an opening on the side of the bag.

**6. Claims 161-163, 167, 198-200 and 204 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 148, 152-155, 157-160, 164-166, 169, 179, 187-197, 201-203, 205-218, above in paragraph 5, and in further view of Hayashi (US 6074097).**

The claims are rejected for the reasons given in the previous Office Action, mailed February 21, 2008.

**7. Claims 148, 152-155, 157-160, 164-166, 169, 179, 187-197, 201-203, 205-218 rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas et al. (US 6148588) in view of Buchman et al. (US 20010053253) in view of Stolmeier et al. (US 6257763), Provan (US 6286189), May (US 5725312) and Malin (US 6183134).**

The claims are rejected for the reasons given in the previous Office Action, mailed February 21, 2008.

**8. Claims 161-163, 167, 198-200 and 204 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 148, 152-155, 157-160, 164-166, 169, 179, 187-197, 201-203, 205-218, above in paragraph 7, and in further view of Hayashi (US 6074097).**

The claims are rejected for the reasons given in the previous Office Action, mailed February 21, 2008.

### ***Response to Arguments***

**9.** Regarding the rejection under 35 U.S.C. 112, second paragraph and relative to the location of the the first and second ends of the hood, this rejection has been withdrawn. It is noted that the second end of the hood is clearly defined in lines 17-19 of claim 148 and figure 44. The first end has been defined as "a first side panel included in said sheet of web material and extending from said first end of the hood." As such, it is being construed that the first end of the hood ends where the first side panel begins and this is at any point along item 35 in figure 44.

**10.** Applicants' urge the reference to Buchman et al. and that to McMahon et al. are not available as prior art since "the only element of independent claims 148, 169, 179, 187, 212 and 214 that is not disclosed in both the '493 Application, the '732 Application as well as the '810 Provisional Application is the location of the opening on the side of the bag." Applicants' further urge that for all the other elements of the independent

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claims other than the location of the opening, the Buchman et al. reference is not available as prior art.

**11.** These arguments have been considered but are not deemed persuasive. It is noted that since the independent claims do recite an opening on the side of the bag, which was not disclosed in the '493 Application, the '732 Application and the '810 Provisional Application, the earliest effective filing date for the independent claims would therefore have been the filing date of the first application for which this element would have had support. Since this limitation is in the independent claims, support for the invention as disclosed in the independent claims is not supported by the parent applications '493 and '732 and the '810 provisional application. At best, the effective filing date is the filing date of PCT/US00/25393, which was filed September 15, 2000 and does have support for the opening on the side of the bag. The reference to Buchman et al. has an effective filing date of March 24, 2000, the reference to McMahon et al. has an effective filing date of May 21, 1999 and the reference to Thomas et al. has an effective filing date of August 12, 1999. As a result, it is noted that the above references are deemed appropriate prior art in view of the effective filing date of the instant application.

**12.** On page 26 of the response, applicants urge that "the Examiner appears to be conceding that this key feature of the invention (namely the location of the structural weaknesses) is not taught or suggested by any of the prior art gleaned by years of examination of this patent application as well as related patent applications, but instead

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is addressed only by the Examiner's grossly unsupported allegation that so locating the structural weakness would have been obvious.

**13.** This argument has been considered but is not deemed persuasive. It is noted that previous to this statement, both the references to Stolmeier et al. (figure 7, item 72) and McMahon et al. (Figure 19, item 132) have been relied on for teaching the location of the structural weaknesses and therefore the prior art does show the claimed location of the structural weaknesses in the hood element of the bag.

### ***Conclusion***

**14. THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VIREN THAKUR whose telephone number is (571)272-6694. The examiner can normally be reached on Monday through Friday from 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jennifer McNeil can be reached on (571)-272-1540. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steve Weinstein/  
Primary Examiner, Art Unit 1794

/V. T./  
Examiner, Art Unit 1794